



IT IS ORDERED

Date Entered on Docket: October 26, 2017

The Honorable David T. Thuma
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

R&G APPLIANCE CORPORATION
d/b/a APPLIANCE CITY,
a New Mexico Domestic Profit Corporation
EIN: 85-0163471,

Bankr. No. 17-11339-t7

Debtor.

**DEFAULT ORDER GRANTING KO CAPITAL, LLC RELIEF FROM STAY AND
ABANDONMENT OF PROPERTY LOCATED AT 500 FOURTH ST. SW,
ALBUQUERQUE NM**

This matter came before the Court on the Motion for Relief from Stay and to Abandon Property located at 500 Fourth St., SW, Albuquerque, NM, filed on August 30, 2017, Docket No. 63, (the “Motion”) by KO Capital, LLC (“Movant”). The Court, having reviewed the record and the Motion, and being otherwise sufficiently informed, FINDS:

- (a) On August 30, 2017, Movant served the Motion and a notice of the Motion (the “Notice”) on counsel of record for the Debtor and the case trustee (the “Trustee”) by use of the Court’s case management and electronic filing system for the

transmission of notices, as authorized by Fed.R.Civ.P. 5(b)(3) and NM LBR 9036-1.

- (b) Because a copy of the Motion was not mailed to the Debtor with the original Notice, on September 27, 2017 Movant filed its Second Amended Notice of Objection Deadline Regarding Motion for Relief from Stay and Abandonment (“Second Amended Notice”) (Doc. 70). The Second Amended Notice was served on counsel of record for the Debtor and the case trustee (the “Trustee”) by use of the Court’s case management and electronic filing system for the transmission of notices, as authorized by Fed.R.Civ.P. 5(b)(3) and NM LBR 9036-1. Also, a copy of the Motion and the Second Amended Notice was served on the Debtor by United States first class mail, in accordance with Bankruptcy Rules 7004 and 9014 and a copy of the Motion was emailed to the newly appointed Chapter 7 Trustee on September 27, 2017 as is reflected in the Certificate of Service (Doc. 71).

- (b) The Motion relates to the following property:

EXHIBIT A

Lots numbered Twenty-two (22), Twenty-three (23), and Twenty-four (24) in Block lettered “I” of the ATLANTIC AND PACIFIC ADDITION to the City of Albuquerque, New Mexico, as the same are shown and designated on Maps of said Addition filed in the office of the Probate Clerk and Ex-officio Recorder of Bernalillo County, New Mexico on April 24, 1888.

and

The West Eleven (11) feet of Lot numbered Nine (9) and all of Lots numbers Ten (10), Eleven (11) and Twelve (12) in Block Lettered “I” of the NEW MEXICO TOWN COMPANY’S ORIGINAL TOWNSITE, of Albuquerque, New Mexico and the ATLANTIC AND PACIFIC ADDITION to said boundary line between the Original Townsite and the Atlantic and Pacific Addition filed in the office of the Probate Clerk and Ex-officio Recorder of Bernalillo County, New Mexico, November 24, 1882.

and

Tracts “A” and “B” in Block “I” of ATLANTIC AND PACIFIC ADDITION to the City of Albuquerque, New Mexico as the same are shown and designated on the plat thereof filed in the office of the County Clerk of Bernalillo County, New Mexico on June 2, 1978.

including any improvements, fixtures, and attachments. (the “Property”). The address of the property is 500 Fourth Street SW, Albuquerque NM. If there is a conflict between the legal description and the street address, the legal description shall control.

(c) The Notice specified an objection deadline of 21 days from the date of service of the Notice, to which three days was added under Bankruptcy Rule 9006(f);

(d) The Notice was sufficient in form and content;

(e) The objection deadline expired on October 23, 2017;

(f) As of October 24, 2017, neither the Debtor nor the Trustee, nor any other party in interest, filed an objection to the Motion;

(g) The Motion is well taken and should be granted as provided herein; and

(h) The Debtor is a corporation so Movant has not searched the data banks of the Department of Defense Manpower Data Center (“DMDC”).

IT IS THEREFORE ORDERED:

1. Pursuant to 11 U.S.C. §362(d), Movant and any and all holders of liens against the Property, of any lien priority, are hereby are granted relief from the automatic stay:

(a) To enforce their rights in the Property, including foreclosure of liens and a foreclosure sale, under the terms of any prepetition notes, mortgages, security agreements, and/or other agreements to which Debtor is a party, to the extent permitted by applicable non-bankruptcy law, such as by commencing or proceeding with appropriate action against the Debtor or the Property, or both, in any court of competent jurisdiction; and

(b) To exercise any other right or remedy available to them under law or equity with respect to the Property.

2. The Trustee is deemed to have abandoned the Property from the estate pursuant to 11 U.S.C. §554 as of the date of entry of this Order, and the Property therefore no longer is property of the estate. As a result, Movant need not name the Trustee as a defendant in any state court action it may pursue to foreclosure liens against the Property and need not notify the Trustee of any sale of the Property.

3. The automatic stay is not modified to permit any act to collect any deficiency or other obligation as a personal liability of the Debtor, although the Debtor can be named as a defendant in litigation to obtain an *in rem* judgment or to repossess the Property in accordance with applicable non-bankruptcy law.

4. This Order does not waive Movant's claim against the estate for any deficiency owed by the Debtor after any foreclosure sale or other disposition of the Property. Movant may file an amended proof of claim this bankruptcy case within 30 days after a foreclosure sale of the Property, should it claim that Debtors owe any amount after the sale of the Property.

5. This Order shall continue in full force and effect if this case is dismissed or converted to a case under another chapter of the Bankruptcy Code.

6. This order is effective and enforceable upon entry. The 14-day stay requirement of Fed.R.Bankr.P. 4001(a)(3) is waived.

END OF ORDER

Submitted by:

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